

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

KELLY LYLES,

Plaintiff,

Case No: \_\_\_\_\_

v.

AMERICAN ZURICH INSURANCE  
COMPANY,

Defendant.

\_\_\_\_\_ /

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, defendant, American Zurich Insurance Company (“American Zurich”), through undersigned counsel, hereby removes the above-captioned matter to this Court from the Circuit Court of the Eleventh Judicial Circuit of Florida, Miami-Dade County (the “State Court Action”), stating as follows:

1. The State Court Action was commenced by plaintiff, Kelly Lyles (“Lyles”), with the filing of her Complaint for Breach of Contract (“Complaint”) on August 8, 2022 in the Circuit Court of the Eleventh Judicial Circuit of Florida, Miami-Dade County (Case No. 2022-014768-CA-01).

2. American Zurich was served with a summons and a copy of the Complaint by the Chief Financial Officer of the State of Florida via electronic delivery on September 1, 2022.

3. American Zurich is the sole defendant in the State Court Action. Pursuant to 28 U.S.C. §1446(a), a copy of all process, pleadings, and orders served upon American Zurich in the State Court Action is attached hereto as Exhibit “A.”

4. The Complaint alleges that American Zurich failed to pay Lyles for all insurance proceeds allegedly due under a “certain homeowners insurance policy” bearing policy number BR15216973 (the “Policy”) in connection with a claim for loss and/or damage that allegedly occurred on or about November 10, 2020 at Lyles’ property located at 10395 NE 12<sup>th</sup> Avenue, Miami Shores, FL 33138 (the “Property”) as a result of Tropical Storm Eta. The Complaint consists of one count for breach of contract.

## **JURISDICTION**

### **I. Diversity of Citizenship**

5. Lyles and American Zurich are citizens of different states for purposes of establishing this Court’s subject matter jurisdiction under 28 U.S.C. § 1332.

6. Lyles is a citizen of Florida and maintains her domicile at the Property. Attached as Exhibit “B” is a true and correct copy of a publicly available record from the Miami-Dade County Property Appraiser ([www.miamidade.gov](http://www.miamidade.gov)). This record shows that Lyles has claimed a homestead exemption for the Property, thus confirming that the Property is her place of domicile. *See Colwell v. Royal Intern. Trading Corp.*, 266 B.R. 714, 719 (Bankr. S.D. Fla. 1998) (“In Florida, a homestead is established when there is ‘actual intent to live permanently in a place, coupled with actual use and occupancy.’”), *quoting In re Brown*, 165 B.R. 512, 514 (Bankr. M.D. Fla. 1994), *citing Hillsborough Inv. Co. v. Wilcox*, 13 So. 2d 488 (Fla. 1943).

7. American Zurich is an Illinois corporation with its principal place of business in Illinois. Attached as Exhibit “C” is a true and correct copy of a publicly available record from the website of the Illinois Department of Insurance ([www2.illinois.gov/sites/insurance](http://www2.illinois.gov/sites/insurance)). Also attached as Exhibit “D” is a true and correct copy of a publicly available record from the website of the Florida Office of Insurance Regulation ([www.floir.com](http://www.floir.com)). These records confirm that

American Zurich is incorporated in Illinois and maintains its principal place of business at 1299 Zurich Way, Schaumburg, IL 60196.

8. Based on the above, since Lyles is a citizen of the State of Florida and American Zurich is a citizen of the State of Illinois for purposes of establishing diversity jurisdiction under 28 U.S.C. § 1332, complete diversity of citizenship exists.

## **II. Amount in Controversy**

9. The amount in controversy in this action, exclusive of interest and costs, exceeds the jurisdictional amount of \$75,000, as set forth in 28 U.S.C. § 1332.

10. The Complaint does not seek a sum certain. It merely alleges that “[t]his is an action for damages that is more than \$30,000.00 exclusive of interest, costs and attorney’s fees.” *See* Complaint, ¶1.

11. However, as referenced above, Lyles submitted a claim under the Policy to American Zurich for loss and/or damage to the Property that allegedly occurred on or about November 10, 2020 as a result of Tropical Storm Eta. In support of her claim, Lyles provided American Zurich with a detailed estimate dated January 19, 2022 (the “Estimate”), allegedly identifying various areas of the Property that sustained damage and the amounts being sought from American Zurich for repairs. The Estimate totals \$139,227.59 (before application of the Policy’s applicable \$5,000 deductible). Attached as Exhibit “E” is a true and correct copy of the Estimate.

12. Additionally, Lyles is seeking attorneys’ fees from American Zurich in this action (*See* Complaint at ¶ 13 and at the “Wherefore” clause), which must also be considered in determining the amount in controversy. *See Morrison v. Allstate Indem. Co.*, 228 F.3d 1255, 1265 (11th Cir. 2000) (“When a statute authorizes the recovery of attorney’s fees, a reasonable amount of those fees is included in the amount in controversy.”); Fla. Stat. § 627.428 (authorizing the

recovery of attorneys' fees against an insurer upon the rendition of a judgment or decree in favor of any named or omnibus insured under a policy or contract executed by the insurer).

13. Based upon American Zurich's investigation of the subject claim, it determined that the claim is not covered under the Policy and, therefore, no insurance proceeds were issued to Lyles. *See* position letter dated April 28, 2022 attached as Exhibit "B" to the Complaint.

14. In light of the above, since Lyles alleges that she is owed \$139,227.59 under the Policy (before application of the Policy's applicable \$5,000 deductible) with respect to the claim and is also entitled to recover her attorneys' fees in this action, and because American Zurich has determined that no insurance proceeds are owed under the Policy for the claim, the amount in controversy exceeds the \$75,000 jurisdictional threshold of this Court.

#### **TIMELINESS OF REMOVAL**

15. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b)(3) and *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999), because it is being filed within thirty (30) days after a copy of the initial pleading setting forth the claim for relief upon which this action is based was served upon American Zurich, i.e., September 1, 2022.

16. Additionally, this Notice of Removal is being filed within one (1) year from the commencement of the State Court Action on August 8, 2022 and therefore meets the timeliness requirement set forth in 28 U.S.C. § 1446(c)(1).

17. In sum, because diversity of citizenship exists as between American Zurich on the one hand, and Lyles on the other, and the amount in controversy exceeds \$75,000, this Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1332.

18. The United States District Court for the Southern District of Florida encompasses the place where the State Court Action is pending. Accordingly, this Court is the proper federal venue for this action.

19. No previous application has been made for the relief requested herein.

20. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for the Plaintiff and a copy is being filed with the Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, Miami-Dade County.

**WHEREFORE**, American Zurich Insurance Company respectfully removes this action from the Circuit Court of the Eleventh Judicial Circuit of Florida, Miami-Dade County.

Dated: September 30, 2022

Respectfully submitted,

ZELLE LLP

By: s/ Jason M. Chodos

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*Attorneys for Defendant,*

*American Zurich Insurance Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 30, 2022, I served the foregoing Notice of Removal upon counsel for Plaintiff, Carlos L. Santi, Esq., Property & Casualty Law Group, 23078 Douglas Road, Suite 302, Miami, FL 33145, by e-mail via the Florida ePortal system to which he is registered.

s/ Jason M. Chodos

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